



JUVENILE SENTENCING LAWS AND COURT DECISIONS AFTER MILLER V. ALABAMA

By: Michelle Kirby, Associate Analyst

JUVENILE SENTENCING

- In 2012, the U.S. Supreme Court ruled that mandatory life without parole sentences (LWOP) are unconstitutional for juvenile homicide offenders (*Miller v. Alabama*).
- Sixteen states have since amended their sentencing laws to comport with the Supreme Court decision.
- Iowa has taken executive action in response to the *Miller* decision, commuting such sentences.
- Five state supreme courts have ruled that aspects of their state juvenile sentencing statutes violate *Miller*.
- The courts disagree on whether the *Miller* decision applies retroactively.
- The Connecticut Supreme Court ruled that a juvenile sentence that is the functional equivalent of LWOP must meet the constitutional requirements of *Miller* (*State v. Riley*).

ISSUE

This report summarizes how state legislatures and other courts have responded to the United States Supreme Court's 2012 ruling in *Miller v. Alabama*.

It updates OLR Report [2014-R-0108](#).

SUMMARY

In *Miller v. Alabama*, the U.S. Supreme Court held that the Eighth Amendment prohibits courts from automatically imposing life without parole (LWOP) sentences on offenders who committed homicides while they were juveniles (under age 18). The Court did not categorically bar these sentences but stated that a court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" (132 S.Ct. 2455 (2012)). *Miller* followed the Court's 2010 ruling in *Graham v. Florida*, where it held that the Eighth Amendment prohibits states from imposing LWOP on juvenile defendants for non-homicide crimes. The Court required "some meaningful opportunity" for release based on a defendant's demonstrated maturity and rehabilitation in the time since he or she committed the crime (130 S.Ct. 2011 (2010)).

At the time of the *Miller* ruling in 2012, at least 26 states had mandatory LWOP sentencing laws for juveniles. At least 16 states have since amended their juvenile sentencing laws in response to the Supreme

Court's ruling that such mandatory sentences are unconstitutional. The new laws generally give judges greater discretion in sentencing juveniles. Some states kept LWOP as a possible sentence for certain offenses, while others eliminated LWOP as a sentencing option. Only some of the laws specify whether or not they apply retroactively to juvenile offenders already sentenced to LWOP. Arkansas, Texas, West Virginia, and Wyoming specify that their laws apply prospectively only, while California, Delaware, North Carolina, and Washington specify that their laws apply retroactively. Hawaii, Michigan, and Pennsylvania specify that their laws apply retroactively only to certain cases based on factors such as the status of the proceedings or specific conviction dates. The laws of the remaining five states are silent on retroactivity. However, the Louisiana Supreme Court ruled that the state's new law applies prospectively only.

Iowa is the only state that has responded with an executive action. Since the *Miller* decision, Iowa's governor commuted the sentences of 38 individuals who were serving mandatory LWOP for crimes they committed as juveniles. But the state supreme court has since ruled that a commuted sentence that is the functional equivalent of LWOP is unconstitutional under *Miller*.

Five state supreme courts (California, Massachusetts, Mississippi, Nebraska, and Wyoming) have ruled that aspects of their state juvenile sentencing statutes are unconstitutional under *Miller*. The California Supreme Court ruled that a statutory presumption in favor of a LWOP sentence violates the Eighth Amendment. The Massachusetts Supreme Court ruled that a state statute that imposes a mandatory LWOP sentence for juveniles violates the Eighth Amendment. The Mississippi Supreme Court ruled that a statutory sentencing scheme that allows a life sentence with opportunity for conditional release at age 65 years is equivalent to mandatory LWOP and prohibited by *Miller*. The Nebraska Supreme Court ruled that a life sentence for a 15-year-old offender is the functional equivalent of mandatory LWOP which violates the Eighth Amendment. Similarly, the Wyoming Supreme Court held that a sentencing statute that provides opportunity for parole only after commutation to a term-of-years sentence is unconstitutional under *Miller*.

The Connecticut Supreme Court ruled that a juvenile sentence that is the functional equivalent of LWOP is unconstitutional under *Miller*.

Courts disagree as to whether the *Miller* decision should apply retroactively to juvenile offenders already serving LWOP sentences. Five of the 11 U.S. Courts of Appeals (First, Second, Third, Fourth, and Eighth Circuits) have not ruled on whether *Miller* is retroactive but have allowed individuals sentenced for crimes committed as juveniles to file petitions in federal district courts based on a showing

that *Miller* should apply retroactively. The Fifth and Eleventh Circuits ruled that *Miller* is not retroactive, while the Ninth Circuit ruled that *Miller* applies retroactively. Federal district courts in Arizona, Michigan, New York, and Tennessee also ruled that *Miller* should be given retroactive effect. Fourteen state supreme courts and the Texas Court of Criminal Appeals (the highest court in Texas for criminal matters) have considered the applicability of the *Miller* decision. The California, Illinois, Iowa, Massachusetts, Mississippi, Nebraska, and Texas courts ruled that the *Miller* decision is retroactive, while Supreme Courts in Louisiana, Michigan, Minnesota, and Pennsylvania have ruled that it is not. The Alabama Court of Criminal Appeals and two Florida district courts of appeals have ruled that the *Miller* decision is not retroactive.

STATES' LEGISLATIVE RESPONSE

As Table 1 shows, at least 16 states have amended their juvenile sentencing laws since the U.S. Supreme Court's decision in *Miller*. The new laws generally give judges greater discretion in sentencing juveniles. Arkansas, Louisiana, Michigan, Nebraska, North Carolina, Pennsylvania, South Dakota, and Washington ended mandatory LWOP sentences, but kept LWOP as a possible sentence for certain offenses. Delaware, Hawaii, Massachusetts, Texas, West Virginia, and Wyoming eliminated LWOP for juveniles convicted of specific categories of crimes. Utah retains LWOP as a sentencing option for one specific offense but eliminated it as an option for all other offenses.

California has passed two juvenile sentencing bills in response to the *Miller* decision. The first provides a mechanism for already sentenced juvenile offenders to seek resentencing. The second establishes new parole eligibility rules that require parole hearings for juvenile offenders at certain points in their incarceration.

The California, Delaware, North Carolina, and Washington laws apply retroactively. Arkansas, Texas, West Virginia, and Wyoming, however, specify that their laws apply prospectively only. The laws of Hawaii, Michigan, and Pennsylvania apply retroactively only to certain cases. The Louisiana law is silent on the issue of retroactive effect; however, the state's supreme court ruled that the law applies prospectively (*Louisiana v. Tate*, 2013 WL 5912118 (2013)).

TABLE 1: STATE LEGISLATION ENACTED AFTER *MILLER V. ALABAMA*

State	Bill Number (Effective)	Synopsis	Retroactive
Arkansas	HB 1993 (04/22/2013)	Ends mandatory LWOP or death sentence for capital murder or treason for juveniles. Juveniles must serve a mandatory 28 years in prison before parole eligibility and may be sentenced to LWOP.	No
California	SB 9 (09/30/2012)	Authorizes a prisoner, sentenced to LWOP as a juvenile offender and who has already served 15 years, to submit a petition for resentencing. If not granted, a subsequent petition may be made after serving 20 years and a final petition after serving 24 years. Not applicable to offenders whose crimes involved torture or the killing of officials such as law enforcement officers. Establishes separate criteria for the court to use when considering whether to conduct a hearing and whether to grant the petition.	Yes
	SB 260 (09/16/2013)	Provides new parole eligibility rules and procedures for juvenile offenders. Depending on the original sentence, requires a parole review after 15, 20, or 25 years for offenders who were under age 18 at the time of their crimes. Specifies the criteria that the parole board must use, including consideration of the "diminished culpability of juveniles." Requires the board to meet with the inmate six years before the initial parole eligibility date to provide specified information, such as recommendations on rehabilitative programs.	Yes
Delaware	SB 9 (06/04/2013)	Ends the use of mandatory LWOP for juveniles. Gives judges discretion to impose terms up to life imprisonment for 1st degree murder. Allows juveniles serving life sentences to seek sentence modification after serving 35 years for 1st degree murder or 25 years for any other offense. Establishes requirements for sentence modification requests. Allows judges to order that multiple terms of incarceration imposed on a juvenile be served concurrently to avoid life sentences.	Yes
Hawaii	HB 2116 (07/02/14)	Eliminates LWOP as a sentencing option for juvenile offenders convicted of 1st degree murder, 1st degree attempted murder, and 2nd degree murder.	<i>Applies to cases not concluded before the law's effective date</i>

State	Bill Number (Effective)	Synopsis	Retroactive
Louisiana	HB 152 (08/01/2013)	Gives judges the discretion to impose life sentences that allow the possibility of parole after serving 35 years for juveniles convicted of 1st and 2nd degree murder. Requires a sentencing hearing where mitigating evidence can be introduced to determine whether the sentence should be imposed with or without parole eligibility.	Silent <i>(The Louisiana Supreme Court ruled that this law applies prospectively only.)</i>
Massachusetts	HB 4307 (07/25/14)	Eliminates LWOP as a sentencing option for juvenile offenders. Requires judges to impose life sentences with the following fixed-year minimums: <ul style="list-style-type: none"> • 1st degree murder: 20- to 30-year minimum • 1st degree murder with extreme atrocity or cruelty: 30-year minimum • 1st degree murder with deliberately premeditated malice aforethought : 25- to 30-year minimum 	Silent
Michigan	SB 319 (03/04/2014)	Ends mandatory LWOP sentences for juvenile offenders. Gives prosecutors the discretion to file a motion to seek an LWOP sentence for juveniles convicted of certain crimes. Requires the court to consider the factors listed in <i>Miller</i> and any other factors the court deems relevant. If the court determines LWOP is not appropriate, the law requires a maximum sentence of at least 60 years and a minimum of 25 to 40 years. Establishes resentencing procedures to be followed if the Michigan Supreme Court finds that <i>Miller</i> applies retroactively to all juvenile offenders. The Michigan Supreme court held that <i>Miller</i> does not apply retroactively (see Table 4).	<i>Applies to cases (1) pending on the bill's effective date or on June 25, 2012 or (2) for which the appeal period has not expired</i>
Nebraska	LB 44 (01/10/2013)	Gives judges the discretion to impose a maximum sentence of LWOP or a minimum sentence of 40-years imprisonment for Class A1 felonies committed by juveniles. Requires the court to consider certain mitigating factors. Requires the parole board to reconsider the offender's release every year after an initial parole denial.	Silent
North Carolina	SB 635 (07/12/2012)	Gives judges the discretion to impose LWOP or life with the possibility of parole after 25 years in 1st degree murder cases for juvenile offenders. Requires the court to conduct a sentencing hearing where any mitigating factors and circumstances, including age at time of offense, must be considered to determine whether to impose life with or without parole eligibility.	Yes

State	Bill Number (Effective)	Synopsis	Retroactive
Pennsylvania	SB 850 (10/25/2012)	Gives judges the discretion to impose the following sentences: <ul style="list-style-type: none"> • 1st degree murder (LWOP is a discretionary option): minimum of 35 years to life for youth ages 15 to 17 and a minimum of 25 years to life for youth under age 15. • 2nd degree murder (LWOP is a discretionary option): minimum of 30 years to life for youth ages 15 to 17 and a minimum of 20 years to life for youth under age 15. 	Applies to convictions after June 24, 2012
South Dakota	SB 39 (03/20/2013)	Gives judges the discretion to sentence a juvenile to any term-of-years or life for a Class A or B felony (LWOP is a discretionary option). Requires a presentencing hearing for juveniles.	Silent
Texas	SB 2 (07/22/2013)	Eliminates LWOP for individuals convicted of capital felony who committed the offense when under age 18. Replaces it with a sentence of life imprisonment with a possibility of parole.	No
Utah	SB 228 (05/14/2013)	With the exception of aggravated 1st degree murder, eliminates LWOP as a sentencing option if the person is younger than age 18 at the time of committing a felony that is subject to a penalty of LWOP. In aggravated 1st degree murder cases, gives judges the discretion to impose LWOP or sentences of 25 years to life for juvenile offenders.	Silent
Washington	SB 5064 (06/01/2014)	Eliminates mandatory LWOP for juveniles convicted of aggravated 1st degree murder who committed the offense when under age 18. Replaces it with a sentence of 25 years to life. Judges have discretion to impose LWOP for juveniles who commit aggravated 1st degree murder at age 16 or 17. Requires the court to take into account mitigating factors as provided in <i>Miller</i> . Allows for the resentencing of juvenile offenders sentenced to LWOP prior to the law's effective date.	Yes
West Virginia	HB 4210 (06/06/2014)	Eliminates LWOP as a sentencing option for juvenile offenders. Provides for parole eligibility after 15 years. The court must consider certain factors in sentencing juveniles.	No
Wyoming	HB 23 (07/01/2013)	Ends LWOP for juveniles who commit 1st degree murder and replaces it with a sentence of life imprisonment. Makes a person sentenced to life for an offense committed as a juvenile eligible for parole after serving 25 years or after the governor has commuted the sentence to a term of years.	No

STATES' EXECUTIVE RESPONSE

Iowa is the only state that has taken executive action since the Supreme Court's decision in *Miller v. Alabama*. Three weeks after the *Miller* decision, Iowa's governor commuted the sentences of 38 individuals serving mandatory LWOP to life

with a possibility of parole after 60 years ([Office of the Governor of Iowa - July 16, 2012 Release](#)). However, the Iowa Supreme Court has since ruled that a commuted sentence of life with no possibility for parole for 60 years is unconstitutional, as it is the functional equivalent of a prohibited mandatory LWOP sentence. In this case, the state supreme court affirmed the district court's decision to resentence the juvenile offender to life in prison with the possibility of parole after 25 years (*Iowa v. Raglan*, 836 N.W.2d 107 (2013)).

COURT DECISIONS AFTER *MILLER V. ALABAMA*

The courts generally agree that *Miller* states a new rule of constitutional law. Courts that have considered the constitutional requirements of *Miller* have ruled on whether the state's juvenile sentencing statutes are unconstitutional, whether the *Miller* decision applies retroactively, or both.

To date, five state supreme courts (California, Massachusetts, Mississippi, Nebraska, and Wyoming) have ruled that a state's juvenile sentencing statute was unconstitutional under *Miller*. In general, these courts looked at whether the sentencing scheme (1) provides the court any discretion when sentencing a juvenile to LWOP (i.e., whether it is mandatory); (2) allows for an individualized sentencing where factors such as a defendant's youth may be considered; or (3) provides an opportunity for release only after a lengthy sentence such that it is equivalent to mandatory LWOP.

There is disagreement among the courts as to whether the U.S. Supreme Court's decision in *Miller* applies retroactively to juveniles sentenced before the Court's ruling. The courts' determination of whether the *Miller* decision applies retroactively generally includes an analysis of whether:

1. the U.S. Supreme Court implicitly made *Miller* retroactive by applying the rule to *Miller's* companion case, *Jackson v. Hobbs* (132 S.Ct. 2455 (2012)), which involved a juvenile whose sentence had been fully reviewed by the courts and could no longer be directly appealed to the Court;
2. *Miller* announced a "substantive rule" that should be given retroactive effect based on the U.S. Supreme Court's prior rulings (see *Teague v. Lane* (109 S.Ct. 1060 (1989))); or
3. *Miller* qualifies as a "watershed procedural rule of criminal procedure" meriting retroactive application under the Court's precedents (see *Teague*).

Below we briefly describe all of the relevant court decisions we found, first from federal courts and then from state courts.

U. S. Courts of Appeals

Various federal courts of appeals have been presented with applications to bring successive habeas corpus petitions seeking to raise claims related to the *Miller* decision. Habeas corpus is a remedy used by state or federal prisoners when they can no longer directly appeal their convictions.

As Table 2 shows, the U.S. courts of appeals have come out on both sides of the question of whether the *Miller* decision should be given retroactive effect. The Ninth Circuit concluded that the *Miller* decision is retroactive. The Fifth and Eleventh Circuits have expressly stated that *Miller* is not retroactive. The First, Second, Third, Fourth, and Eighth Circuits have not explicitly ruled on whether or not *Miller* applies retroactively. Instead, they ruled only that there was sufficient argument made that the *Miller* decision is retroactive (i.e., a prima facie showing), and therefore authorized petitioners to file successive habeas petitions in district courts. Note that the Fifth Circuit, subsequent to its earlier decision that *Miller* is not retroactive, had also granted two such motions in cases that involved LWOP and lengthy term-of-years sentences.

TABLE 2: U.S. COURTS OF APPEALS DECISIONS AFTER *MILLER*

U.S. COURTS OF APPEALS			
<i>Court (Date)</i>	<i>Case</i>	<i>Holding</i>	<i>Retroactive</i>
1st Circuit (Feb. 28, 2014)	<i>Evans-Garcia</i> v. U.S. 2014 WL 800498 (1 st Cir. 2014)	Inmate who received mandatory LWOP was entitled to file second or successive motion as he made a prima facie showing that the rule in <i>Miller</i> applies.	Unclear
2nd Circuit (July 22, 2013)	<i>Alejandro</i> v. U.S. (unpublished) (2 nd Cir. 2013)	Authorized the district court to hear petition seeking resentencing based on the <i>Miller</i> decision.	Unclear
3rd Circuit (Oct. 3, 2013)	<i>In re Pendleton</i> <i>In re Baines</i> 732 F.3d 280, 282 (3 rd Cir. 2013)	Authorized each petitioner to file a successive habeas petition in the district court on the grounds that petitioners made a prima facie showing of <i>Miller's</i> retroactivity.	Unclear
4th Circuit (May 5, 2013)	<i>In re James</i> (unpublished) (4 th Cir. 2013)	Granted certification of a second or successive habeas petition based on <i>Miller</i> without discussion.	Unclear
5th Circuit (Jan. 4, 2013)	<i>Craig</i> v. <i>Cain</i> 2013 WL 69128	Denied a request to certify a habeas petition on the grounds that <i>Miller</i> is not retroactive. <i>Miller</i> does not satisfy the test for retroactivity because it does not	No

U.S. COURTS OF APPEALS			
Court (Date)	Case	Holding	Retroactive
	(5th Cir. 2013)	categorically bar all sentences of life imprisonment for juveniles. <i>Miller</i> bars only those sentences made mandatory by a sentencing scheme.	
5th Circuit (Feb. 7, 2014)	<i>In re Simpson</i> (unpublished) (5th Cir. 2014)	Petitioner serving LWOP made required prima facie showing that his petition rested on new rule of constitutional law under <i>Miller</i> , made retroactive by U.S. Supreme Court on collateral review.	Unclear
5th Circuit (Feb. 7, 2014)	<i>In re Clark</i> (unpublished) (5th Cir. 2014)	Granted motion authorizing a successive petition in the district court. Petitioner currently serving lengthy term-of-years sentence met prima facie requirements that his petition rested on new rule of constitutional law under <i>Miller</i> .	Unclear
8th Circuit (July 12, 2013)	<i>Johnson</i> v. U.S. 720 F.3d 720, 721 (8th Cir. 2013)	Granted motion to file a successive petition based on <i>Miller</i> . Petitioner made a prima facie showing that <i>Miller</i> contains a new rule of constitutional law, made retroactive to cases on collateral review by the U.S. Supreme Court.	Unclear
9th Circuit (Aug. 7, 2013)	<i>Moore</i> v. <i>Biter</i> 725 F.3d 1184 (9th Cir. 2013)	1. U.S. Supreme Court's new rule, that sentencing a juvenile offender to LWOP for a non-homicide crime violated the Eighth Amendment, applied retroactively on collateral review, and 2. a term-of-years sentence of 254 years is indistinguishable from a sentence of LWOP which is prohibited under prior U.S. Supreme Court rulings (see <i>Graham</i>).	Yes
11th Circuit (April 12, 2013)	<i>In re Morgan</i> 713 F.3d 1365, 1367–68 (11th Cir. 2013)	New constitutional rule regarding the imposition of life sentences on juvenile offenders is not retroactive.	No

Federal District Courts

As shown in Table 3, federal district courts in Arizona, Michigan, New York, and Tennessee have held that the *Miller* decision, prohibiting mandatory LWOP sentences for juveniles, applies retroactively allowing for the resentencing of those prisoners who had received such sentences prior to the U.S. Supreme Court's ruling. The federal district court in Minnesota applied *Miller* retroactively in a specific case. However, the federal district court in Virginia ruled that *Miller* does not apply retroactively.

TABLE 3: FEDERAL DISTRICT COURTS DECISIONS AFTER *MILLER*

FEDERAL DISTRICT COURTS			
Court (Date)	Case	Holding	Retroactive
Arizona United States District Court, District of Arizona (July 15, 2014)	<i>U.S.</i> v. <i>Orsinger</i> 2014 WL 3427573 (2014)	Court concluded that <i>Miller</i> is retroactive and applicable to petitioner because he was age 16 at the time of the offenses for which he was given several mandatory life sentences. Granted motion to resentence in accordance with <i>Miller</i> .	Yes
Michigan United States District Court, Eastern District of Michigan, Southern Division (Jan. 30, 2013)	<i>Hill, et. al.</i> v. <i>Snyder, et. al.</i> 2013 WL 364198 (2013)	<i>Miller</i> applies retroactively. Compliance with <i>Miller</i> and <i>Graham</i> requires providing a fair and meaningful possibility of parole to all Michigan prisoners who were sentenced to life for a crime committed as a juvenile.	Yes
Minnesota United States District Court, District of Minnesota (Feb. 5, 2015)	<i>U.S.</i> v. <i>Jefferson</i> 2015 WL 501968 (2015)	Offender, age 16 at the time of the offenses for which he was sentenced to mandatory life in prison, petitioned for resentencing in light of <i>Miller</i> . The court stated that although the U.S. Supreme Court did not specifically hold that <i>Miller</i> applies retroactively, the government in this case did not oppose the petition for resentencing, therefore it was granted.	Yes (in this case)
New York United States District Court, Southern District of New York (Aug. 22, 2013)	<i>Alejandro</i> v. <i>U.S.</i> 2013 WL 4574066 (2013)	The court concluded that <i>Miller</i> announced a new rule of constitutional law that is substantive rather than procedural and must be applied retroactively on collateral review. The court set aside the sentence and ordered resentencing in conformity with <i>Miller</i> . (The 2 nd Circuit authorized the district court to hear this case, see above.)	Yes
Tennessee United States District Court, Middle District of Tennessee (Sept 2, 2014)	<i>Starks</i> v. <i>Easterling</i> 2014 WL 4347593 (2014)	The court held that <i>Miller</i> applies retroactively. It also held that fixed-term sentences that are the functional equivalent of juvenile LWOP are also unconstitutional under <i>Miller</i> . However, the court granted the motion to dismiss the habeas petition because it found that (1) most of the petitioner's claims were untimely and (2) the timely <i>Miller</i> claim was not grounds for habeas relief.	Yes

FEDERAL DISTRICT COURTS			
Court (Date)	Case	Holding	Retroactive
Virginia United States District Court, Eastern District of Virginia (June 20, 2014)	<i>Dumas</i> v. <i>Clarke</i> 2014 WL 2808807 (2014)	The court ruled that the habeas petition in the case was not timely filed but even if it was, the new rule announced in <i>Miller</i> does not apply retroactively to cases on collateral review.	No

State Supreme Courts

To date, 14 state supreme courts and the Texas Court of Criminal Appeals (the highest court in Texas for criminal matters) have considered the constitutional requirements of the *Miller* decision (see Table 4).

The California, Massachusetts, Mississippi, Nebraska, and Wyoming Supreme Courts ruled that aspects of their states' juvenile sentencing statutes are unconstitutional. The California Supreme Court ruled that a statutory presumption in favor of an LWOP sentence violates the Eighth Amendment. The Massachusetts Supreme Court ruled that a state statute was unconstitutional because it imposed a mandatory LWOP sentence on a juvenile offender, which is prohibited by *Miller*. The Mississippi Supreme Court ruled that a sentencing scheme that allows a conditional release after age 65 is equivalent to mandatory LWOP and is unconstitutional because the conditional release is not determined at the time of sentencing based on age and other characteristics of youth, as required by *Miller*. The Nebraska Supreme Court ruled that a life sentence for a 15-year-old offender is the functional equivalent of mandatory LWOP which violates the Eighth Amendment. Similarly, the Wyoming Supreme Court ruled that a state sentencing statute which provides an opportunity for parole only after the governor commutes an LWOP sentence to a term-of-years is unconstitutional because it is equivalent to an LWOP sentence without an individualized sentencing where the court may consider factors such as age, as *Miller* requires.

The Connecticut Supreme Court found a juvenile sentence of 100 years imprisonment to be functionally equivalent to LWOP, and therefore requires consideration of the mitigating factors of youth.

The California, Illinois, Iowa, Massachusetts, Mississippi, Nebraska, South Carolina, and Washington Supreme Courts as well as the Texas Court of Criminal Appeals have ruled that the *Miller* decision applies retroactively. On the other hand, the Louisiana, Michigan, Minnesota, and Pennsylvania Supreme Courts have ruled that

Miller does not apply retroactively. The Louisiana Supreme Court also ruled that recently enacted state legislation (2013 Act 239) prohibiting mandatory LWOP for juveniles applies prospectively only. The Connecticut and Wyoming Supreme Courts' decisions did not discuss the issue of retroactivity, although Connecticut's decision applied to a juvenile sentenced prior to *Miller*.

TABLE 4: STATE SUPREME COURTS DECISIONS AFTER *MILLER*

STATE SUPREME COURTS			
Court (Date)	Case	Holding	Retroactive
California (May 5, 2014)	<i>State</i> v. <i>Gutierrez</i> 58 Cal.4 th 1354 (2014)	The court ruled that, in light of <i>Miller</i> , a statutory presumption in favor of an LWOP sentence violated the Eighth Amendment. Although the defendants received an LWOP sentence before the <i>Miller</i> decision was issued, the court reversed and remanded the case for resentencing.	Yes
Connecticut (Feb. 27, 2015)	<i>State</i> v. <i>Riley</i> 2015 WL 854827 (2015)	The court ruled that the defendant, a juvenile at the time of the offense, was entitled to a new sentencing proceeding because the lower court failed to consider the mitigating factors of youth, as required by <i>Miller</i> , when it sentenced the defendant to 100 years imprisonment, a sentence functionally equivalent to LWOP.	Not discussed
Illinois (Mar. 20, 2014)	<i>State</i> v. <i>Davis</i> 2014 IL 115595 (2014)	The court held that: 1. the sentencing statute that required the trial court to sentence defendant convicted of murder of more than one person to a term of natural life, did not violate the Eighth Amendment on its face, 2. <i>Miller</i> is a new substantive rule that applies retroactively on post-conviction review, and 3. <i>Miller</i> justifies hearing the petitioner's request for reconsideration on successive post-conviction review.	Yes
Iowa (Aug. 16, 2013)	<i>State</i> v. <i>Ragland</i> 836 N.W.2d 107 (2013)	The court held that: 1. <i>Miller</i> applies retroactively to cases on direct and collateral review and 2. the defendant's commuted sentence of life with no possibility for parole for 60 years was unconstitutional, as it is the functional equivalent of a mandatory LWOP sentence.	Yes

STATE SUPREME COURTS			
Court (Date)	Case	Holding	Retroactive
Louisiana (Nov. 5, 2013)	<i>State</i> v. <i>Tate</i> 2013 WL 5912118 (2013)	The court held that: 1. <i>Miller</i> does not apply retroactively in state cases on collateral review as it merely sets forth a new rule of criminal constitutional procedure, which is neither substantive nor implicates fundamental fairness and the accuracy of criminal proceedings and 2. statutes requiring presentencing hearing on parole eligibility with regard to life sentence for a defendant who was under 18 at time of 1st degree murder or 2nd degree murder (2013 Act 239) applies prospectively only.	No
Massachusetts (Dec. 24, 2013)	<i>Diatchenko</i> v. <i>District Attorney for the District of Suffolk & others</i> 466 Mass. 655 (2013)	The court held that: 1. <i>Miller's</i> prohibition against mandatory LWOP sentences for juvenile offenders was a new substantive constitutional rule that applied retroactively to cases on collateral review and 2. mandatory LWOP sentencing statute violated defendant's right of protection against cruel and unusual punishment.	Yes
Michigan (July 8, 2014)	<i>State</i> v. <i>Carp</i> 496 Mich. 440 (2014)	The court held that <i>Miller</i> does not apply retroactively under federal or state retroactivity rules. The court reasoned that the rule announced in <i>Miller</i> constitutes a new rule that is procedural not substantive.	No
Minnesota (May 31, 2013)	<i>Chambers</i> v. <i>State</i> 831 N.W.2d 311 (2013)	The court held that the <i>Miller</i> decision is a new rule of criminal constitutional procedure that is neither substantive nor a watershed rule. Therefore, the <i>Miller</i> rule does not apply retroactively in a post-conviction proceeding.	No
Mississippi (June 6, 2013)	<i>Parker</i> v. <i>State</i> 119 So.3d 987 (2013)	Among other things, the court held that a life sentence with an opportunity for conditional release at age 65 years amounts to LWOP which is prohibited by <i>Miller</i> . The court also ruled that the statutory sentencing scheme violates <i>Miller</i> .	Not discussed
Mississippi (July 18, 2013)	<i>Jones</i> v. <i>State</i> 122 So.3d 698 (2013)	The court held that <i>Miller's</i> prohibition against mandatory LWOP for juvenile offenders applied retroactively on collateral review.	Yes

STATE SUPREME COURTS			
Court (Date)	Case	Holding	Retroactive
Nebraska (Feb. 7, 2014)	<i>State</i> v. <i>Mantich</i> 287 Neb.320 (2014)	The court ruled that: 1. <i>Miller</i> is a new substantive rule that applies retroactively on collateral review and 2. the mandatory life sentence for 1st degree murder committed when defendant was age 15 is the functional equivalent of mandatory LWOP which violates the Eighth Amendment.	Yes
Pennsylvania (Oct. 30, 2013)	<i>Pennsylvania</i> v. <i>Cunningham</i> 81 A.3d 1 (2013)	The court held that <i>Miller's</i> prohibition against mandatory LWOP sentencing for juvenile offenders does not apply retroactively.	No
Texas Court of Criminal Appeals (Mar. 12, 2014)	<i>Ex parte Maxwell</i> 424 S.W.3d 66 (2014)	The court ruled that <i>Miller</i> applies retroactively and remanded the case for resentencing. In this case, the defendant was under 18 at the time of the offense and was sentenced to mandatory LWOP.	Yes
South Carolina (Nov. 12, 2014)	<i>Aiken</i> v. <i>Byars, Jr.</i> 410 S.C.534 (2014)	The court held that the <i>Miller</i> decision applies retroactively. The court granted the petition for the resentencing of 15 defendants who were given LWOP for offenses committed as juveniles.	Yes
Washington (July 17, 2014)	<i>Personal Relief Petition (PRP)</i> <i>McNeil</i> 181 Wash. 2d 582 (2014)	While petitions for collateral review of LWOP sentences were pending before the court, the legislature passed SB 5064 (2014) to make state statute comport with <i>Miller</i> (the " <i>Miller</i> fix"). The court ruled that the: 1. legislative change had no impact on whether the petitioners could prove that, to the extent their life sentences were imposed in violation of the Eighth Amendment, the violation resulted in actual and substantive prejudice to them, and 2. the <i>Miller</i> fix is not an unconstitutional ex post facto law (i.e., increases the punishment and retrospectively applied) because it does not increase the penalty for juvenile offenders.	Yes

<p>Wyoming (Feb. 8, 2013)</p>	<p><i>Bear Cloud</i> v. <i>State</i> 294 P.3d 36 (2013)</p>	<p>The court held that:</p> <ol style="list-style-type: none"> 1. a sentence of LWOP for a juvenile offender who was deprived of a meaningful possibility to be considered for parole is unconstitutional under <i>Miller</i>, 2. a sentencing statute that provides the opportunity for parole only after commutation to a term of years sentence is different from parole eligibility and is unconstitutional under <i>Miller</i>, and 3. LWOP as a sentencing option for a juvenile who committed 1st degree murder is constitutional. <p>(The Wyoming Supreme Court remanded for resentencing. On remand, the district court resentedenced the juvenile to life with the possibility of parole after 25 years. The defendant appealed and the Wyoming Supreme Court issued the decision shown below.)</p>	<p>Not discussed</p>
<p>Wyoming (Sept. 10, 2014)</p>	<p><i>Bear Cloud</i> v. <i>State</i> 334 P.3d 132 (2014)</p>	<p>The court ruled that a sentence of life for 1st degree murder with the possibility of parole after 25 years, ordered to run consecutively to a sentence of 20 to 25 years for aggravated burglary, for an aggregate sentence of just over 45 years was a de facto equivalent of a LWOP sentence prohibited under <i>Miller</i>.</p>	<p>Not discussed</p>

State Appellate Courts

As shown in Table 5, the Alabama Court of Criminal Appeals and two Florida district courts of appeals have ruled that the *Miller* decision does not apply in post-conviction motions. The Tennessee Court of Criminal Appeals did not discuss the issue of the retroactive applicability of *Miller*, but held that the *Miller* rule does not extend to a sentence of life with the possibility of parole after 51 years.

TABLE 5: STATE APPELLATE COURTS DECISIONS AFTER *MILLER*

STATE APPELLATE COURTS			
Court (Date)	Case	Holding	Retroactive
Alabama Court of Criminal Appeals (Nov. 21, 2014)	<i>State</i> v. <i>Mangione</i> 2014 WL 6607945 (2014)	The court held that <i>Miller</i> does not apply retroactively to cases on collateral review. It reversed and remanded post-conviction relief the lower court granted to the defendant who was convicted for offenses committed at age 16.	No
Florida District Court of Appeals, Third District (Sept. 27, 2012)	<i>Geter</i> v. <i>State</i> 115 So.3d 375 (2012)	<i>Miller</i> was not a development of fundamental significance and, therefore, is not applicable retroactively to Florida post-conviction proceedings where the life sentence was final when the <i>Miller</i> decision was rendered.	No
Florida District Court of Appeals, First District (April 30, 2013)	<i>Falcon</i> v. <i>State</i> 111 So.3d 973 (2013)	<i>Miller</i> does not apply retroactively to defendant's post-conviction motion.	No
Tennessee Court of Criminal Appeals (Apr. 7, 2014)	<i>Perry</i> v. <i>State</i> 2014 WL 1377579 (2014)	<i>Miller's</i> prohibition on mandatory LWOP for juvenile offenders does not extend to a sentence of life with the possibility of parole after 51 years. The court denied the petition requesting an expansion of the meaning of the <i>Miller</i> holding.	Not discussed

MK:jk